

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

REMARKS

Applicants deeply appreciates the indication that Claims 14 and 15 are allowed.

Rejection under 35 U.S.C. Section 102:

Claim 1 and Claim 10 were rejected under 35 U.S.C. Section 102 as being anticipated by Lehmann (U.S. Patent No. 6,164,248). Lehman discloses in Column 2, Lines 51-60: "According to FIG. 1, control device 1 has a cylindrical valve housing 2, in which a **sleeve-shaped rotary slide valve 3** is supported. **Rotary slide valve 3 is provided with an axial collector opening 4 on one end face, while it is closed on the other side, and is provided with a driving device 5 to swivel it about its longitudinal axis.** Valve housing 2, on the side facing away from driving device 5, is provided with a cover 6 having a central flange 7, via which a connection is effected to a pump 8, shown in FIGS. 7 and 8, for collector opening 4." Therefore, the **sleeve-shaped rotary slide valve 3** corresponds to the **valve rotor** as claimed in Applicants' Claim 1 and Claim 10. **Therefore, as described and observed in FIG. 2, there is but a single internal fluid passage located within the sleeve-shaped rotary slide valve 3 or valve rotor.**

In marked contrast, Applicants' Claim 1 and Claim 10 have been amended to recite "...the valve rotor can provide a **plurality of internal fluid passages** within the valve rotor...." Support for this Amendment can be found in Paragraph [0026], Lines 2-8, in the Applicants' Specification as follows: "**The valve rotor has a number of internal fluid passages formed therein** that are interconnected to one another within the interior of the valve rotor and to various

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

openings 48, 50 and 52 formed on the surface of the valve rotor. The openings are circumferentially, as well as axially spaced relative to one another in precisely defined locations so as to become aligned with selected ports formed in the valve housing 30 at preselected rotational orientations of the valve rotor relative to the valve housing." Therefore, no new matter has been added.

It is now a basic tenet of patent law that the results and advantages produced by the claimed subject matter, of which the prior art is devoid, cannot be ignored simply because the claim limitations are similar to the otherwise barren prior art. It is respectfully believed that patentability of the claimed subject matter must be determined in view of the invention "as a whole." Moreover, for a valid 35 U.S.C. Section 102 rejection, it is respectfully believed that a single reference must teach each and every element of the rejected claim. In this case, the presence of a **plurality of internal fluid passages** is a completely missing element that provides significant advantages not found in Lehmann. This provides a significant advantage since it is able to direct more fluid simultaneously to the desired outlet ports.

Moreover, proper application of a reference against a device described and claimed in a patent application requires broadly that the anticipatory device be substantially the same as the anticipated device in structure function and result. In this case, the structure is different since Lehmann only has a **single internal fluid passage** within the valve rotor as shown in FIG. 2. Moreover, the function and associated results will be different since the fluid flow in Lehmann is

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

controlled by a single internal conduit in the valve rotor rather than at least two internal fluid conduits potentially directing fluid through the valve rotor simultaneously.

By utilizing a plurality of fluid conduits in the valve rotor in the Applicants' Invention, as claimed, the distribution and regulation of coolant flow is enhanced. Therefore, Applicants' Invention, as claimed, provides a significant advantage that does not teach the source of the problem created by a single internal fluid passage in the valve rotor due to the diminished fluid control based on the fact that all fluid must pass through a single internal passage nor the slightest hint or suggestion as to the solution. Moreover, there is not the slightest teaching, suggestion or incentive to modify the disclosed device found in Lehmann.

Therefore, Claim 1 and Claim 10 overcome the rejection under 35 U.S.C. Section 102 as being unpatentable over Lehmann.

Claims 4, 6, and 8 were also rejected under 35 U.S.C. Section 102 as being anticipated over Lehmann. Since Claims 4, 6, and 8 depend from and contain all of the limitations of Claim 1, as amended, Claims 4, 6, and 8 are felt to distinguish from Lehmann in the same manner as Claim 1.

Claim 9 was rejected under 35 U.S.C. Section 102 as being anticipated by Kurr et al. (U.S. Patent No. 5,529,026). Claim 9 depends from Claim 1 and contains all of the limitations thereof. Claim 9 overcomes the prior art in the same manner as Claim 1 recited above. If an independent claim is nonobvious under 35 U.S.C. Section 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

Therefore, even to a greater extent, if the independent claim is not anticipated under 35 U.S.C. Section 102 then any claim depending therefrom cannot be anticipated.

Kurr et al., in the Abstract, on Lines 1-16, recites: "A regulating valve, comprising a housing having a cylindrical valve chamber, is disclosed. The valve chamber is provided with at least one inflow and at least two outflow ports. The inflow and the outflow ports can be at least partly closed off as required by **a single common valve body arranged in the valve chamber that can rotate about an axis**. The valve body acts as a rotary valve and can be actuated by a drive. The inflow and/or at least one of the outflow ports is surrounded on the side of the housing facing the valve body by a seal. The seal can be brought into sealing engagement with the valve body under an elastic preload. **The valve body has an extension in the peripheral direction of the valve chamber that is delimited in each case by an edge, such that the flowoff edge passing over the inflow port while it is opening has an axially extending elliptical indentation.**" Therefore, the valve body 8 corresponds to the valve rotor as claimed in Applicants' Claim 9.

Therefore, as described and observed in FIG. 2, there is but a single internal fluid passage located within the valve body 8 or valve rotor.

In marked contrast, Applicants' Claim 9 has been amended to recite "...wherein the **plurality of internal fluid passages includes a gap between the valve rotor and the valve housing....**" Support for this Amendment can be found in Paragraph [0026], Lines 2-8, in the Applicants' Specification as follows: **"The valve rotor has a number of internal fluid**

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

passages formed therein that are interconnected to one another within the interior of the valve rotor and to various openings 48, 50 and 52 formed on the surface of the valve rotor. The openings are circumferentially, as well as axially spaced relative to one another in precisely defined locations so as to become aligned with selected ports formed in the valve housing 30 at preselected rotational orientations of the valve rotor relative to the valve housing." Therefore, no new matter has been added.

It is now a basic tenet of patent law that the results and advantages produced by the claimed subject matter, of which the prior art is devoid, cannot be ignored simply because the claim limitations are similar to the otherwise barren prior art. It is respectfully believed that patentability of the claimed subject matter must be determined in view of the invention "as a whole." Moreover, for a valid 35 U.S.C. Section 102 rejection, it is respectfully believed that a single reference must teach each and every element of the rejected claim. In this case, the presence of a **plurality of internal fluid passages** is a completely missing element that provides significant advantages not found in Kurr et al. This provides a significant advantage since it is able to direct more fluid simultaneously to the desired outlet ports.

Moreover, proper application of a reference against a device described and claimed in a patent application requires broadly that the anticipatory device be substantially the same as the anticipated device in structure, function and result. In this case, the structure is different since Kurr et al. only has a **single internal fluid passage** within the valve rotor as shown in FIG. 2. Moreover, the function and associated results will be different since the fluid flow in Kurr et al.

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

is controlled by a single internal conduit in the valve rotor rather than at least two internal fluid conduits potentially directing fluid through the valve rotor simultaneously.

By utilizing a plurality of fluid conduits in the valve rotor in the Applicants' Invention, as claimed, the distribution and regulation of coolant flow is enhanced. Applicants' Invention, as claimed, provides a significant advantage that does not teach the source of the problem created by a single internal fluid passage in the valve rotor that is due to the diminished fluid control based on the fact that all fluid must pass through a single internal passage. There is also not the slightest hint or suggestion as to the solution to this problem. Moreover, there is not the slightest teaching, suggestion or incentive to modify the disclosed device found in Kurr et al.

Therefore, Claim 9 overcomes the rejection under 35 U.S.C. Section 102 as being unpatentable over Kurr et al.

Rejection under 35 U.S.C. Section 103:

Claims 2 and 3 were rejected under 35 U.S.C. Section 103 as being unpatentable over Lehmann and further in view of Inoue et al. (U.S. Patent No. 5,957,377). Since Claims 2 and 3 depend from and contain all of the limitations of Claim 1, as amended, Claims 2 and 3 overcome Lehmann in the same manner as Claim 1, as previously described above. If an independent claim is nonobvious under 35 U.S.C. Section 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

Moreover, Inoue et al. does not disclose a valve rotor, rotatably disposed within the valve housing, wherein the valve rotor can provide **a plurality of internal fluid passages** within the

Amendment A

Application Serial No. 10/707,502

Inventors: Allan McLane and William D. Kramer

Attorney Docket No. 718395.57

valve rotor to provide fluid communication between the inlet port and at least one of the first outlet port, the second outlet port and the third outlet port as recited in Claim 1.

In contrast, Inoue et al. discloses in Column 24, Lines 66-67, and Column 25, Lines 1-29: "According to the eighteenth embodiment, a configuration change to form an orifice configuration and a nozzle configuration on both the needle valve 17 side and the valve housing 18 side has been added, as shown in FIGS. 34A-34C, but according to a nineteenth embodiment, as shown in FIG. 37, concave grooves 17d and 17e are provided on the portions of the first and second restricting portions A_1 and A_2 of the needle valve 17 and an orifice configuration is formed, and along with this, a chamfered portion 17f is formed on the third restricting portion A_3 portion and a nozzle configuration is formed, and convexities 19a and 20a and a chamfered portion 21a are not formed on the valve housing 18 side. Even when structured in this way, the slopes of the flow constant C can be varied at the first and second restricting portions A_1 and A_2 and the third restricting portion A_3 . A twentieth embodiment is a reverse of the foregoing second embodiment, and as shown in FIG. 38, is a device wherein convexities 19a and 20a and a chamfered portion 21a are formed on the valve housing 18 side, and concave grooves 17d and 17e and a chamfered portion 17f are not formed on the needle valve 17 side. Even when structured in this way, the slopes of the flow constant C can be varied at the first and second restricting portions A_1 and A_2 and the third restricting portion A_3 . As is understood from the foregoing eighteenth through twentieth embodiments, it is acceptable to provide an orifice configuration and nozzle configuration to vary the slopes of the flow constant C of the first

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

through third restricting portions $A_1 - A_3$ at a respective restricting portion on at least one of the needle valve 17 side or valve housing 18 side."

Therefore, control passages 17a and 17b form but a single internal fluid passage. It is respectfully believed to be axiomatic that a feature not disclosed in either of two cited references cannot come into being by their combination.

Therefore, it is respectfully believed that all claim limitations must be considered. In this case, Inoue et al. does not disclose a plurality of internal fluid passages to improve fluid control. It is now a basic tenet of patent law that the results and advantages produced by the claimed subject matter, of which the prior art is devoid, cannot be ignored simply because the claim limitations are similar to the otherwise barren prior art. It is respectfully believed that patentability of the claimed subject matter must be determined in view of the invention "as a whole." In this case, internal fluid passages to improve fluid control provide a significant advantage in fluid control not disclosed in Inoue et al. It is respectfully believed that the test is whether it would have been obvious to one of ordinary skill in the art given the teachings of the prior art references. Therefore, there is no recognition of the problem faced by the Applicants, i.e., improving fluid flow control and decrease interdependency for the fluid flow coming from the outlet ports, and as a result, one skilled in the art would not likely consider Lehmann or Inoue et al. in an attempt to solve such a problem. By improving fluid flow control, the efficiency of the system for cooling is increased by requiring less overall coolant flow to achieve the desired level of temperature.

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

Therefore, Claims 2 and 3 overcome the rejection under 35 U.S.C. Section 103 as being unpatentable over Lehmann in view of Inoue et al.

Claim 5 was rejected under 35 U.S.C. Section 103 as being unpatentable over Lehmann. As Claim 5 depends from and contains all of the limitations of Claim 1, as amended, Claim 5 overcomes Lehmann in the same manner as Claim 1, as previously described above. If an independent claim is nonobvious under 35 U.S.C. Section 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

The Federal Circuit Court requires that there must be some reason or suggestion for combining the prior art references. It is improper to apply an "obviousness to try" standard or indulge in hindsight evaluation or reconstruction to attempt to arrive at the Applicants' Invention as claimed. See Ecolochem, Inc. v. Southern California Edison Co., 56 U.S.P.Q.2d 1065 (Fed. Cir. 2000). In this case, there is no motivation whatsoever to use an electric pump with the system of Lehmann much less the slightest hint or suggestion to do so.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. In re Jones, 958 F.2d 347, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992).

The mere fact that references can be modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

in the reference to do so." See Id., 916 F.2d at 682, 16 U.S.P.Q.2d at 1432. See also In re Fritch, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992).

Moreover, a statement that modifications of the prior art to meet the claimed invention would have been within the ordinary skill of the art at the time the claimed invention was made because the references relied upon teach that all aspects of the claimed invention were individually known in the art, is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). Moreover, under In re Sang Su Lee, 277 F.3d 1338 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002), the Federal Circuit Court found that the Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion. In this case, it is respectfully believed that there is no support to state that an electric pump added to the system of Lehmann is obvious to someone with ordinary skill in the art.

Therefore, Claim 5 overcomes the rejection under 35 U.S.C. Section 103 as being unpatentable over Lehmann.

Claim 7 was rejected under 35 U.S.C. Section 103 as being unpatentable over Lehmann in view of Zajac et al. (U.S. Patent No. 6,315,267). Since Claim 7 depends from and contains all of the limitations of Claim 1, as amended, Claim 7 overcomes Lehmann in the same manner as Claim 1 as previously described above. If an independent claim is nonobvious under 35 U.S.C.

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

Section 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

Moreover, Zajac et al. does not disclose a valve rotor, rotatably disposed within the valve housing, wherein the valve rotor can provide **a plurality of internal fluid passages** within the valve rotor to provide fluid communication between the inlet port and at least one of the first outlet port, the second outlet port and the third outlet port as recited in Claim 1. In contrast, Zajac et al. discloses in Column 3, Lines 16-22: "A **rotary valve member 46** having a generally cylindrical or barrel-like configuration has an inlet aperture 48 formed therein on the cylindrical face thereof and which communicates with a similar aperture 50 formed on the opposite side of the barrel 46 as shown in FIG. 1 and in dashed outline in FIG. 2. Rotary valve member or barrel 46 has an upwardly extending hub 52." Therefore, there is **a single internal fluid passage**. **It is respectfully believed to be axiomatic that a feature not disclosed in either of two cited references cannot come into being by their combination.**

Moreover, it is respectfully believed that all claim limitations must be considered. In this case, Zajac et al. does not disclose a plurality of internal fluid passages to improve fluid control. It is now a basic tenet of patent law that the results and advantages produced by the claimed subject matter, of which the prior art is devoid, cannot be ignored simply because the claim limitations are similar to the otherwise barren prior art. It is respectfully believed that patentability of the claimed subject matter must be determined in view of the invention "as a whole." In this case, internal fluid passages to improve fluid control provide a significant

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

advantage in fluid control not disclosed in Zajac et al. It is respectfully believed that the test is whether it would have been obvious to one of ordinary skill in the art given the teachings of the prior art references. Therefore, there is no recognition of the problem faced by the Applicants, i.e., improving fluid flow control and decrease interdependency for the fluid flow coming from the outlet ports, and as result, one skilled in the art would not likely consider Lehmann or Zajac et al. in an attempt to solve such a problem. By improving fluid flow control, the efficiency of the system for cooling is increased by requiring less overall coolant flow to achieve the desired level of temperature.

Therefore, Claim 7 overcomes the rejection under 35 U.S.C. Section 103 as being unpatentable over Lehmann in view of Zajac et al.

Claim 11 was rejected under 35 U.S.C. Section 103 as being unpatentable over Lehmann in view of Inoue et al. and further in view of Zajac et al.

Lehman discloses in Column 2, Lines 51-60: "According to FIG. 1, control device 1 has a cylindrical valve housing 2, in which a **sleeve-shaped rotary slide valve 3** is supported. **Rotary slide valve 3 is provided with an axial collector opening 4 on one end face, while it is closed on the other side, and is provided with a driving device 5 to swivel it about its longitudinal axis.** Valve housing 2, on the side facing away from driving device 5, is provided with a cover 6 having a central flange 7, via which a connection is effected to a pump 8, shown in FIGS. 7 and 8, for collector opening 4." Therefore, the **sleeve-shaped rotary slide valve 3** corresponds to the **valve rotor** as claimed in Applicants' Claim 11.

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

Therefore, as described and observed in FIG. 2, there is but a single internal fluid passage located within the sleeve-shaped rotary slide valve 3 or valve rotor.

In contrast, Inoue et al. discloses in Column 24, Lines 66-67, and Column 25, Lines 1-29: "According to the eighteenth embodiment, a configuration change to form an orifice configuration and a nozzle configuration on both the needle valve 17 side and the valve housing 18 side has been added, as shown in FIGS. 34A-34C, but according to a nineteenth embodiment, as shown in FIG. 37, concave grooves 17d and 17e are provided on the portions of the first and second restricting portions A_1 and A_2 of the needle valve 17 and an orifice configuration is formed, and along with this, a chamfered portion 17f is formed on the third restricting portion A_3 portion and a nozzle configuration is formed, and convexities 19a and 20a and a chamfered portion 21a are not formed on the valve housing 18 side. Even when structured in this way, the slopes of the flow constant C can be varied at the first and second restricting portions A_1 and A_2 and the third restricting portion A_3 . A twentieth embodiment is a reverse of the foregoing second embodiment, and as shown in FIG. 38, is a device wherein convexities 19a and 20a and a chamfered portion 21a are formed on the valve housing 18 side, and concave grooves 17d and 17e and a chamfered portion 17f are not formed on the needle valve 17 side. Even when structured in this way, the slopes of the flow constant C can be varied at the first and second restricting portions A_1 and A_2 and the third restricting portion A_3 . As is understood from the foregoing eighteenth through twentieth embodiments, it is acceptable to provide an orifice configuration and nozzle configuration to vary the slopes of the flow constant C of the first

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

through third restricting portions $A_1 - A_3$ at a respective restricting portion on at least one of the needle valve 17 side or valve housing 18 side."

Therefore, control passages 17a and 17b form but a single internal fluid passage.

Zajac et al. discloses in Column 3, Lines 16-22: "A rotary valve member 46 having a generally cylindrical or barrel-like configuration has an inlet aperture 48 formed therein on the cylindrical face thereof and which communicates with a similar aperture 50 formed on the opposite side of the barrel 46 as shown in FIG. 1 and in dashed outline in FIG. 2. Rotary valve member or barrel 46 has an upwardly extending hub 52." **Therefore, the rotary valve member 46 corresponds to the valve rotor as claimed in Applicants' Claim 11.**

In marked contrast, Applicants' Claim 11 has been amended to recite "...wherein the valve rotor can provide **a plurality of internal fluid passages** within the valve rotor to provide fluid communication between the inlet port and at least one of the first outlet port, the second outlet port and the third outlet port...." Support for this Amendment can be found in Paragraph [0026], Lines 2-8, in the Applicants' Specification as follows: "**The valve rotor has a number of internal fluid passages formed therein** that are interconnected to one another within the interior of the valve rotor and to various openings 48, 50 and 52 formed on the surface of the valve rotor. The openings are circumferentially, as well as axially spaced relative to one another in precisely defined locations so as to become aligned with selected ports formed in the valve housing 30 at preselected rotational orientations of the valve rotor relative to the valve housing." Therefore, no new matter has been added.

Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

Therefore, there is a single internal fluid passage. It is respectfully believed to be axiomatic that a feature not disclosed in either of three cited references cannot come into being by their combination. Therefore, it is respectfully believed that all claim limitations must be considered. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Moreover, the Court of Appeals for the Federal Circuit Court has consistently highlighted the importance of considering the subject matter "as a whole" to take into account all limitations of the claims. Carl Schenck, A.G. v. Nortron Corp., 713 F.2d 782, 218 U.S.P.Q. 698 (Fed. Cir. 1983). To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Moreover, "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970).

Also, the use of a plurality of fluid passages provides a significant advantage by overcoming a significant problem associated with a change in demand for heat and engine load. It is respectfully believed that ever since Eibel Process Co. v. Minnesota and Ontario Paper Co., 261 U.S. 45 (1923), the U.S. Supreme Court, the Federal Court of Appeals for the Federal Circuit Court, as well as the United States Patent Office have recognized the longstanding rule that discovery of the source of the problem is patentable even if the solution is deemed obvious (which is not the present situation). Also, see In re Kaslow, 707 F.2d 1366, 217 U.S.P.Q. 1089 (Fed. Cir. 1983) and In re Sponnoble, 405 F.2d 578, 160 U.S.P.Q. 237 (C.C. P.A. 1969).

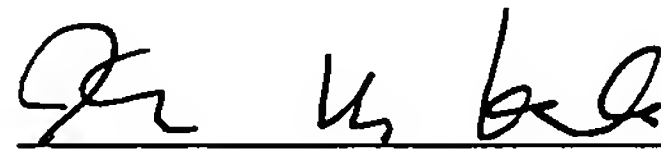
Amendment A
Application Serial No. 10/707,502
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.57

Claims 12 and 13 were rejected under 35 U.S.C. Section 103 as being unpatentable over Lehmann in view of Inoue et al. and further in view of Zajac et al. Since Claims 12 and 13 depend from and contain all of the limitations of Claim 11, as amended, Claims 12 and 13 overcome Lehmann in the same manner as Claim 11 as previously described above.

It is now believed that Claims 1-13 in the present application, as currently amended, are allowable and allowance of the Claims is respectfully requested. If any issue regarding the allowability of any of the pending claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner's Amendment, or if the Examiner should have any questions regarding this amendment, it is respectfully requested that Examiner please telephone Applicants' undersigned Attorney in this regard.

Respectfully submitted,

Date: November 8, 2004



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